



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,926	07/21/2003	Frank A. Traylor III	40312.0002USC1	6768

7590 01/09/2004

Attn: William J. Daley  
MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, MN 55402-0903

EXAMINER

CHARIOUI, MOHAMED

ART UNIT PAPER NUMBER

2857

DATE MAILED: 01/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/624,926

Applicant(s)

TRAYLOR, FRANK A.

Examiner

Mohamed Charioui

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 38-51 is/are allowed.
- 6) ☒ Claim(s) 24-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Applicant cancelled claims 1-23.

#### ***Double Patenting***

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

**Claims 24-37** are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-14, respectively, of prior U.S. Patent No. 6,596,153. This is a double patenting rejection.

#### ***Allowable Subject Matter***

3. **Claims 38-51** are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

**Regarding claims 38-44**, None of the prior art of record teaches or suggests a microprocessor programmed to measure the electrical output of the electrochemical sensor on a periodic basis to produce sensor measurements, calculate a reaction factor, a discharge factor, and an amplitude factor associated with the electrical output of the electrochemical sensor based on the sensor measurements, and calculate the quantity of the electrochemically convertible substance in the gas sample using an

Art Unit: 2857

arithmetic equation based on the reaction factor, the discharge factor and the amplitude factor; and a display to display results in combination with the rest of the claim limitations.

**Regarding claims 45-51**, None of the prior art of record teaches or suggests a microprocessor programmed to measure the electrical output of the electrochemical sensor on a periodic basis to produce sensor measurements, calculate a reaction factor and a discharge factor associated with the electrical output of the electrochemical sensor based on the sensor measurements, compare a combination of the reaction and discharge factors to a combination of predetermined reaction and discharge factors associated with one or more predetermined reactants, and identify the electrochemically convertible substance as one of the one or more predetermined reactants existing in the gas sample in combination with the rest of the claim limitations.

#### **Prior art**

4. The prior art made record and not relied upon is considered pertinent to applicant's disclosure:

**Porter et al. ['853]** disclose breath analysis device.

**Thompson ['840]** discloses time clock breathalyzer combination.

**Gammenthaler ['746]** discloses apparatus and method for determining a person's sobriety.

#### **Contact information**

Art Unit: 2857

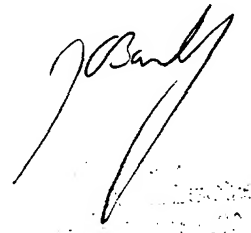
5. Any inquiry concerning this communication from examiner should be directed to Mohamed Charioui whose telephone number is 703 605-4362. The examiner can normally be reached Monday to Friday 9 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached at 703 308-1677. The fax phone number for the organization where this application is assigned is 703 305-3431.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose number is 703 308-0956.

Mohamed Charioui

12/27/03

A handwritten signature in black ink, appearing to read 'Mohamed Charioui', with a stylized flourish at the end.